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Supreme Court, U.S.
FILED
MAY 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF TEXAS

APPENDIX I

SUPREME COURT OF TEXAS RULING; COURT OF APPEALS JUDGMENT AND OPINION; FINDINGS OF FACT AN CONCLUSIONS OF LAW; SUPPLEMENTAL STATEMENT OF FACTS ("S.S.F.")

SUPREME COURT OF TEXAS

RULING

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

January 21, 1987

Mr. Samuel L. Boyd
Boyd & Fults
2001 Bryan Tower
Suite 2700
Dallas TX 75201

Ms. Priscilla E. Perry
Boyd & Fults
2001 Bryan Tower
Suite 2700
Dallas TX 75201

Mr. Peter Nolan
Bunton, Nolan, Ode & Cooper
511 West Seventh Street
Austin TX 78701

RE: Case No. C-5802

STYLE: GREGORY JONES, BY AND THROUGH HIS NEXT FRIEND, LARRY JONES v. UNIVERSITY INTERSCHOLASTIC LEAGUE ET AL.

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

Mary M. Wakefield, Clerk

By: Blanca E. Morin
Deputy

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

JUDGMENT

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

UNIVERSITY INTERSCHOLASTIC LEAGUE,

APPELLANT,

v. NO. 05-85-01271-CV

GREGORY JONES, ET AL.,

APPELLEES.

JUDGMENT

In accordance with this Court's opinion of July 23, 1986, the judgment of the trial court is VACATED and this suit is DISMISSED with prejudice. It is ORDERED that each party pay its own costs in the trial court and in this court.

Jully 23, 1986.

/s/
CYNTHIA HOLLINGSWORTH
JUSTICE

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-85-01271-CV

UNIVERSITY INTER-SCHOLASTIC LEAGUE,

APPELLANT,

v.

GREGORY JONES, ET AL.,

APPELLEES.

FROM A DISTRICT COURT OF DALLAS COUNTY, TEXAS

BEFORE JUSTICES VANCE, MCCLUNG AND HOLLINGSWORTH
OPINION BY JUSTICE HOLLINGSWORTH
JULY 23, 1986

The University Interscholastic League appeals a permanent injunction restraining it from taking any action to prevent appellee, Gregory Jones, from participating in U.I.L.-sponsored games at Highland Park High School or from penalizing Highland Park High School for allowing Jones to participate in U.I.L.-

sponsored games at Highland Park. We vacate the order and dismiss the suit because the issue is now moot.

This case arose under the application of section 409 of the construction and contest rules of the U.I.L. which provides:

> a) INELIGIBLE. A student who changes schools for athletic purposes is not eligible to compete in varisty legue athletic contest(s) at the school to which he moves for at least one calendar year.

In the fall of 1984 Gregory Jones was a junior at Irving MacArthur High School and a third-string quarterback on the MacArthur football team. On November 16, 1984, the Jones family moved from Irving to a house in Highland Park. The Highland Park athletic director, fearing that Jones may have transferred to Highland Park to further his athletic career, requested that the District 9AAAAA Executive Committee meet to determine if Jones had violated rule 409.

A meeting was held on March 20, 1985, and the board determined that Jones had moved for athletic purposes

and that Jones was therefore barred from playing football his senior year at Highaldn Park. Jones, believing the board acted arbitrarily, capriciously, with bias, and in violation of his due process and equal protection rights, brought suit to void the actions of the board and to enjoin the U.I.L. from preventing him from playing football at Highland Park or from penalizing Highland Park for

allowing Jones to play. After the filing of this suit the executive committee agreed to reconvene a new panel of supposedly "neutral" members to reconsider the Jones case. This meeting was held on August 9, 1985 at which time the same conclusion was reached.

Jones's suit came to trial in September 1985. At the close of the evidence the trial court held that the board members at both the March and the August meetings were biased against Jones and that they acted arbitrarily and capriciously in ruling that Jones moved for athletic purposes. The trial court voided the actions of the board and granted the injunctive relief sought by Jones. From these actions the U.I.L. appeals.

Because of the injunction, Jones was

allowed to play football at Highland Park. Jones played the 1985 football season and he has since graduated. Therefore, the question of the impropriety of the trial court's action is now moot. Univerity Interscholastic League v. Hardin-Jefferson Independent School District, 648 S.W.2d 770, 772 (Tex. App.--Beaumont 1983, no

writ); Houston Independent School District v. Houston Teachers Association, 617 S.W.2d 765, 766-67 (Tex. App.--Houston [14th Dist.] 1981, no writ); see also Fink v. Hinson, 253 S.E.2d 757, 758 (Ga. 1979); National Collegiate Athletic Association v. Tucker, 476 A.2d 1160, 1161 (Md. 1984).

The law is settled in this state that courts are created not for the purposes of deciding abstract or academic questions of law or to render advisory opinion, but solely for the judicial determination of presently existing disputes between the parties in which an effective judgment can be rendered. City of West University Place v. Martin, 132 Tex. 354, 356, 123 S.W.2d 638, 639 (Tex. 1939); In re Ivey, 534 S.W.2d 163,

165 (Tex. Civ. App.--Austin 1976, writ ref'd n.r.e.); Greene v. Gregg, 520 S.W.2d 924, 926 (Tex. Civ. App.--Tyler 1975, no writ). As aptly stated by the Supreme Court in the case of the Brownlow v. Schwartz, 261 U.S. 216, 217 and quoted by our supreme court in City of West University Place:

> This court will not proceed to determination when its judgment would be wholly ineffectual . . . . An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other.

123 S.W.2d at 638.

For us to affirm the judgment would require us to order that Greg Jones be allowed to play football for Highland Park in 1985. Greg Jones has already done so. Likewise, for us to order a reversal would require us to order that Jones be prohibited from playing football for Highland Park in 1985. The absurdity of such an order is apparent.

For the reasons above stated, the judgment of the trial court is vacated and this suit is dismissed. University Interscholastic League v. Sims, 133 Tex.

605, 131 S.W.2d 94 (1939). Since this case became moot while on appeal, the costs of court incurred in both the trial and appellate court by each party are taxed against the parties incurring such costs. Greene, S.W.2d at 927; Hinojosa v. Garcia, 260 S.W.2d

711, 712 (Tex. Civ. App.-- San Antonio 1953, no writ).

/s/
CYNTHIA HOLLINGSWORTH
JUSTICE

PUBLISH

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

NO. 85-5676

GREGORY JONES, A Minor, By and Through his Next Friend, LARRY JONES,	§	IN THE DISTRICT COURT
Plaintiff	§	
V.	§	OF DALLAS COUNTY, TEXAS
UNIVERSITY INTERSCHOLASTIC LEAGUE, AND THE EXECUTIVE COMMITTEE, DISTRICT 9AAAAA, OF THE UNIVERSITY INTERSCHOLASTIC LEAGUE,	§	
Defendants	§	193RD JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having indicated its desire to enter Findings of Fact and Conclusions of Law is of the opinion that the following was established at the trial of this cause:

FINDINGS OF FACT

1. The Plaintiff Gregory Jones was

an honor student, student leader and athlete while attending Irving MacArthur High School in Irving, Texas, through November of 1984.

2. Gregory Jones' family moved in November of 1984 from the Irving MacArthur Independent School District to the Highland Park Independent School District.

3. As a result of the family's move, Gregory Jones left behind his friends, church and his opportunity to play on the starting lineup on the varsity basketball team during the 1984-85 season.

4. The Jones' family moved from Irving to Highland Park in order to improve the quality of the family's life and reduce living expenses and to facilitate another son's attendance at Baylor Dental College.

5. The Jones' family retained ownership of their home in Irving on the basis of advise offered by Larry Jones' aunt

who was allowing them to rent an otherwise vacant home in Highland Park in order to work out the family's problems.

6. The Jones' family moved in November, 1984, because until that date the house in Highland Park was not ready for occupancy, and Gregory's parents did not want to unnecessarily interfere with Greg's grading periods.

7. The Jones' family did not move to Highland Park in order that Gregory Jones could participate in athletics at Highland Park High School, and the Jones' family had no contact with any Highland Park representatives prior to their move.

8. Subsequent to the Jones' family's move to Highland Park, another student, also for family reasons, transferred from the Garland Independent School District to the Highland Park Independent School District, an even shorter move, and was approved for athletic participation.

9. Gregory Jones is the only stu-

dent transfer request which has ever been denied in District 9AAAAA when both the sending and receiving school administrations have given approval of the transfer, and Gregory Jones is the only student transfer applicant who has been subjected to an evidentiary hearing in order to obtain district approval of a transfer request.

10. All other student transfer requests which have been approved by both the sending and receiving school administrations have been approved without evidentiary hearings in District 9AAAAA.

11. All other student transfer requests have been approved solely on the basis of written documentation; principally, the completion of the Previous Athletic Participation Form which was properly completed by the Jones' family; even so, other students have been conditionally

approved without completed paperwork.

12. Gregory Jones' student transfer request was initially considered and denied by a final vote of the District 9AAAAA Executive Committee on March 20, 1985.

13. District Executive Committee considerations of student transfer requests are to be impartial, fair and

based upon credible evidence produced at the hearing.

14. The denial of Gregory Jones' student transfer request by the District 9AAAAA Executive Committee on March 20, 1985, was not impartial, not fair and not based upon credible evidence, but rather was pervasively infected with bias, prejudice and unfair presentations of information which included hearsay representations, anonymous telephone calls, misrepresentations of relations between the Jones' family and the coaching staff at Irving MacArthur, and conscious factual non-disclosures of favorable facts which should have been made in order to provide a fair and impartial forum.

15. The pervasive unfairness of the District 9AAAAA Executive Committee meeting on March 20, 1985, was produced in

part by inappropriate ex-parte consultations between at least Coach Qualls, of the Mesquite Independent School District, and Coach Johnson, of the Garland Independent School District, whose voting intentions were known by Coach Qualls prior to the March 20, 1985 meeting at which evidence was to be considered.

16. At the March 20, 1985, meeting Coach Qualls inaccurately represented the nature of the relationship between Coach Overton and the staff at Irving MacArthur High School, on the one hand, and Gregory Jones and his family, on the other hand, in the following manner:

A. Coach Qualls reported that Mr. Jones had advised Coach Overton that Mr. Jones was moving to Highland Park in order that his son could obtain a better opportunity to play football, contrary to Coach

Overton's sworn testimony;

B. Coach Qualls reported that the relationship between Coach Overton, on the one hand, and the Jones' family, on the other hand, was one of conflict or "bad blood", contrary to Coach Overton's sworn testimony;

C. Coach Qualls inaccurately reported that Gregory Jones had been in constant competition with Shawn Hall, another Irving football player, since junior high school, and that Shawn Hall had always prevailed, when sworn of testimony of Coach Overton demonstrated that the two

young men, who have always been on friendly terms, had not even been in direct competition until the Fall of 1984 in their junior years at Irving MacArthur High School;

D. Coach Qualls inaccurately reported that in 1984 at Irving MacArthur High School Gregory Jones and Shawn Hall were involved in a "quarterback controversy" which allegedly divided the boys, the team, the Booster Club, and fans, contrary to Coach Overton's sworn testimony.

17. After Coach Quall's misrepresentations of Coach Overton's comments, which directly conflicted with Coach Overton's certification on the Previous Athletic Participation Form, at the March 20, 1985 District 9AAAAA Executive Committee meeting, suggestions were made that Coach Overton be contacted and asked to withdraw his approval

or allowed the opportunity to explain the dramatic conflict between Coach Qualls' report and the Coach Overton's certification that the Jones' family had not moved for "athletic purposes;" however, the suggestions for direct evidence from Coach Overton were neither encouraged nor well received by the representatives from Mesquite and Garland which, together represented six (6) of the seven (7) votes at the meeting.

18. Coach Overton of Irving MacArthur testified under oath and discredited the major contentions which Coach Qualls had inaccurately represented at the March 20, 1985, District 9AAAAA Executive Committee meeting and included the following material facts:

A. Coach Overton was not told by Mr. Jones that the Jones' family was moving to Highland Park in order for Gregory Jones

to have a better chance of playing football.

B. There was no conflict or "bad blood" between the Jones' family, on the one hand, and Coach Overton or his staff, on the other hand; to the contrary, Coach Overton had very little contact with the Jones family, considered them loyal and friendly boosters, considered Gregory a fine young honor student at Irving MacArthur, a student leader, a good athlete, and a young man without personal conflict with Coach Overton;

C. Coach Overton confirmed that the two boys had competed against one another very little until they were juniors at Irving MacArthur because

(1) on separate teams in the eighth grade;

(2) in the ninth grade Gregory Jones did not play football, and Shawn

Hall was absent from the State of Texas;

(3) the two boys were on different football teams in the tenth grade; and

(4) the two boys had an equal chance of becoming the first string quarterback for the Fall, 1985 football season at Irving MacArthur;

D. There was no "quarterback controversy" at Irving MacArthur in the fall of 1984 between Gregory Jones and Shawn Hall which allegedly divided the boys, the team, the boosters or the fans; to the contrary, the athletic relationship between the two boys was nothing more than healthy competition for the second string quarterback position and no divisive consequences resulted from that competition;

19. Dr. Ralph Poteet's testimony

denying bias, prejudice or the lack of impartiality at the March 20, 1985, District 9AAAAA Executive Committee meeting is contrary to his actions established by uncontradicted testimony.

20. Coach Homer Johnson's testimony denying bias, prejudice or the lack of impartiality at the March 20, 1985, District 9AAAAA Executive Committee meeting is contrary to his actions established by uncontradicted testimony.

21. Coach Charles Qualls' testimony denying bias, prejudice or the lack of impartiality at the March 20, 1985, District 9AAAAA Executive Committee meeting is contrary to his actions established by uncontradicted testimony.

22. The testimony of Coach Ray Overton, the Irving MacArthur football coach, Mr. Hobart Lytal, the Athletic Driector at

the Irving Independent School District, and Mr. Larry Jones on material facts was direct, unimpeached and supported the original

certification by both the sending and receiving schools that the Jones' family had not moved "for athletic purposes."

23. The testimony of Garland and Mesquite representatives discloses that the Gregory Jones' transfer request did not, and could not, receive a fair and impartial consideration by the presently constituted Executive Committee in the District 9AAAAA.

24. The voting members of the District 9AAAAA Executive Committee on March 20, 1985, admittedly relied upon, and were influenced by, Coach Qualls' inaccuracies and Dr. Poteet's presentation of an anonymous phone call concerning an unidentified Irving MacArthur football player.

25. There was no recruiting of Gregory Jones by Highland Park High School reprsentatives.

26. At the March 20, 1985, District

9AAAAA Executive Committee meeting, Coach Johnson, voted and directed the majority vote, required that the Jones' family prove to him "beyond a shadow of a doubt" that they had not moved "for athletic purposes," which is unreasonable, unfair and unjust evidentiary standard which in District 9AAAAA transfer deliberations has only been imposed upon Gregory Jones.

27. In addition to the inaccuracies and nondisclosures by Dr. Ralph Poteet, Coach Charles Qualls and Coach Homer Johnson, no more than a scintilla of evidence could have indicated a move by the Jones family "for athletic purposes," had the forum been a fair, reasonable and impartial forum which it was not.

28. Subsequent to the denial of Gregory Jones' transfer request on March 20, 1985 by the District 9AAAAA Executive

Committee, Dr. Ralph Poteet purported to conduct a personal investigation and render an impartial follow-up report to the voting members in order to determine whether or not they desired a reconsideration of the Jones' request, as is reflected in Plaintiff's Exhibit No. 8; instead, his letter dicloses a continuing bias, prejudice and inexplicable intention to unfairly

deny Gregory Jones a fair and impartial forum for his transfer request in that Dr. Poteet: (1) inaccurately reported his conversations with Hobart Lytal; (2) failed to disclose information favorable to the Jones' position; and (3) inaccurately reported that he had contacted school administrators who testified at trial that no such contact had been made.

29. No member of the Jones' family was given either notice or an opportunity to participate at the March 20, 1985 District 9AAAA Executive Committee meeting, despite the fact that Mesquite and Garland representatives were negatively inclined before hearing any evidence at the hearing.

30. Subsequent to the pervasively biased and prejudiced proceedings and decision, the arbitrary action, and the abuse of discretion by the District 9AAAAA Executive Committee on March 20, 1985, the Plaintiff

filed his suit with Application for Injunctive Relief on April 25, 1985.

31. Subsequent to the Plaintiff's filing of suit, and the taking of depositions of the executive committee members by Plaintiff's counsel, Dr. Ralph Poteet and Mr. Peter Nolan, counsel for the UIL, represented to the Plaintiff that he would be offered a fair and impartial consideration at another hearing, although the Plaintiff through his counsel made evident his preference for the impartiality of the judicial system over the already demonstrated bias of the District 9AAAAA Executive Committee.

32. Despite the Plaintiff's rejection of the offer for another hearing, the District 9AAAAA Executive Committee made evident through their counsel that an additional hearing on Gregory Jones' transfer request would nonetheless be held by an allegedly

independent, uninformed and unbiased panel of school representatives on August 9, 1985; yet, no screening for bias or prejudice was conducted as promised.

33. Five of the seven principals who represented the District 9AAAAA high schools at the August 9, 1985, ad hoc meeting

were not credible in their standardized testimony that they knew nothing, had heard nothing and had seen nothing of the Gregory Jones' transfer issue at the time of the second hearing on August 9, 1985; rather, several of the witnesses on adverse examination reflected unreasonably conflicting reports of conversations which occurred in their joint presence and indicated some advance knowledge of the nature of the meeting of which they were allegedly unaware.

34. Coach Charles Qualls and Coach Homer Johnson whose actions constitued the majority of the pervasive bias, prejudice and unfairness at the March 20, 1985 meeting, objectively deprived the August 9, 1985 committee of possible impartiality or fairness by:

A. Conferring with panel members on

the hearing subject matter during breaks in testimony; and

B. Maintaining an influential presence at the evidentiary meeting.

C. Advising panel members regarding questioning of witnesses.

35. Mr. David McNabb, a newspaper reporter without a stake in the outcome of this proceeding, reluctantly testified and confirmed the improper communications which occurred between the allegedly impartial committee and Coaches Qualls and Johnson during testimonial breaks on August 9, 1985.

36. The Plaintiff and his father appeared at the August 9, 1985 District 9AAAAA Executive Committee meeting for the reason that the District had indicated that the meeting would be convened and the Jones' request would be considered irrespective of the Plaintiff's presence.

37. Counsel for the UIL, who stipulated to the impropriety of the March 20, 1985 hearing, accepted the charge of insuring that impartial proceedings were to have been convened at the August 9, 1985 meeting; however, counsel, himself was responsible for continuing prejudice by proposing an alleged "quarterback controversy" by the form of his questions, despite the uncontradicted testimony of Coach Overton that no such contro-

versy existed.

38. The ad hoc representatives of the District 9AAAAA Executive Committee meeting on August 9, 1985 were presented with not more than a scintilla of evidence, being the continued ownerhip of the Irving home and the rental of the Highland Park home, which could have indicated a possible move "for athletic purposes," while the overwhelming credible evidence from the Jones' family, Coach Ray Overton and the Previous Athletic Participation Form made evident that the Jones' family move was not "for athletic purposes."

39. On the basis of the substance and the credibility of the witnesses who testified on matters occurring in connection with the August 9, 1985, ad hoc District 9AAAAA Executive Committee meeting, it is evident that the pervasive bias, prejudice

and unfairness present in the March 20, 1985 meeting was transferred to, and became a part of, the August 9, 1985 meeting; therefore, Gregory Jones was once again subjected to an arbitrary denial and an abuse of discretion by the partial ad hoc committee.

40. At no time since the filing of this action on April 25, 1985 has the Plaintiff taken any action calculated to voluntarily relinquish any rights or privileges which he may have in pursuing relief through judicial proceedings.

41. The reasonable and necessary attorney's fees incurred by the Plaintiff in prosecuting this action through the trial is the sum of $40,000.00; if required to respond to any appeal to the Court of Appeals, an additional fee of $7,500.00 would be reasonable and necessary; and if required to defend the Judgment of this Court in the

Supreme Court of Texas, an additional award of $5,000.00 would be reasonable and necessary, however, the trial court makes no award of attorney's fees.

Conclusions Of Law

1. The 193rd Judicial District Court has jurisdiction of the matter.

2. The conduct of the proceedings and the discretion exercised by the District 9AAAAA

Executive Committee on March 20, 1985 and on August 9, 1985, as supported by the Findings of Fact herein, constitued an arbitrary and discriminatory application of Rule 409 which is violative of equal protection principles honored by the Texas Supreme Court in Spring Branch I.S.D. v. Stamos, 28 Tex. Sup. Ct. J. 554 (1985); citing, Yick Wo v. Hopkins, 118 U.S. 356 (1886); accord, Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex. 1981) and denial of hearing by a fair an impartial tribunal.

3. The Jones family did not move "for athletic purposes" within the prohibitions of Rule 409 of the Constitution & Contest Rules of the University Interscholastic League.

4. Gregory Jones was not recruited within the meaning of Rule 409 of the Constitution & Contest Rules of the

University Interscholastic League.

5. The conduct of the voting members, and their associates, in the March 20, 1985 and August 9, 1985 District 9AAAAA Executive Committees which met on the Rule 409 student transfer request of Gregory Jones made evident that Gregory Jones did not, and could not, receive a fair and impartial consideration on his transfer request in District 9AAAAA.

6. The decisions of the District 9AAAAA Executive Committees which met on March 20, 1985 and August 9, 1985 in connection with the Gregory Jones transfer request are null and void, because of the pervasive violation of Gregory Jones' equal protection guarantees of the Texas Constitution as identified in Spring Branch I.S.D. v. Stamos, 28 Tex. Sup. Ct. J. 554 (1985).

7. The University Intershcolastic

League is not entitled to any relief herein.

SIGNED this 27th day of October, 1985.

JUDGE PRESIDING

SUPPLEMENTAL STATEMENT OF FACTS

"SSF"

NO. 5676-L

GREGORY JONES	*	IN THE DISTRICT COURT
VERSUS	*	OF DALLAS COUNTY, TEXAS
UNIVERSITY INTERSCHOLASTIC	* *	193RD JUDICIAL DISTRICT

SUPPLEMENTAL STATEMENT OF FACTS
MOTION TO MODIFY AND FOR RECONSIDERATION
September 30, 1985

A P P E A R A N C E S:

MR. SAM BOYD
Attorney at Law
Dallas, Texas

APPEARING FOR THE PLAINTIFF

MR. PETER A. NOLAN
Attorney at Law
511 West 7th St.
Austin, Texas 78701

APPEARING FOR THE DEFENDANT

BE IT REMEMBERED, that on the 30th day of September, 1985, the above styled and numbered cause came on for trial before the HONORABLE JOHN WHITTINGTON, Judge of the 193rd Judicial District Court of Dallas

County, Texas, and the followings proceedings were had:

the opinion, and I would so find that there was some evidence that the hearing body could have relied upon to make their ruling. Therefore, I was not basing my ruling on an absence of any evidence upon which they could have formed their opinion.

There may be other grounds upon which I grant the injunction, but the one that I most was aware of was that I found that the hearing body conducted the hearing and the preparation in a manner that demonstrated pervasive bias. That it would be reflected in numerous acts of the Chairman of the Board Dr. Poteet, by his delegate -- I've forgotten -- the gentlemen is here, but I can't think of his name. Mr. Qualls. His conduct the Court considered to be repeatedly unfair in his presentation of the information regarding his dealings with Coach Overton, with hearsay representations that were made

in the first hearing. Those were related by Dr. Poteet.

Anonymous telephone calls were presented to the determining body, and Dr. Poteet said, and I'm aware that you cannot fully disregard anonymous statements, but none the less he went ahead and presented them to the determining body.

That at that hearing it was suggested that Coach Overton be given an opportunity, in view of what Mr. Qualls said, that there was hostility and conflict between the parents, and that that had been one of the orgins for the transfer because -- and the coach. This was obviously in conflict such as we call the Parol Evidence Rule. He had signed a

recommendation transfer that it was not for athletic purposes, nor was there any indication of recruiting involved.

Further, the failure for a fair and impartial hearing to have been conducted was reflected by -- Mr. Boyd, I'm sure will know the name, either Mr. Johnson or Thompson, who said under oath that his standard for non-athletic transfer was beyond a shadow of a doubt, which is an unacceptable standard for anyone to apply. Beyond a shadow of a doubt is not a legitimate standard to apply in any inquiry unless you are dealing with a criminal matter.

Further, even though the UIL attorney did carefully seek to remedy the hearing, and there was some evidence that the second hearing was an attempt to obtain an impartial hearing, none the less the same two gentlemen, with whom I have just referred to, were

delegates of Dr. Poteet, met and conferred with the voting members of the second constituted body an suggested to them or counseled with them as to questions to be asked to the witnesses.

This reflected another continuation of the undue influence by these parties, a lack of pervasive fairness, and there were numerous other instances of this conduct.

So consequently, just as in Yick Wo, a search of this record will reflect testimony under oath by these parties that this Court considers that the entire conduct of the hearing was one that was biased against the transfer request. Why, I do not

know. I don't go to the motives of it.

But none the less, the only thing I can guess is it was an authoritarian response. We all know what authoritarian response it. It's: Don't ask me why I do it, I'm telling you this is it. That's known as an authoritarian response. That is what I sort of preceived throughout this proceedings.

Now, those are my overview, and that was because we didn't have time. This is what I would have said at the conclusion of that other hearing. I told Mr. Boyd, I said: Draft an order with findings.

Well, I left out one. No, I didn't. And also that Garland had four votes, which was proper. I mean that was the numerical correct vote. But they were cast in the first proceedings by the gentlemen who stated that it would have to be shown to him beyond

a shadow of a doubt that the transfer was not for athletic reasons. And I believe he cast all four of them the first time.

And then it also goes beyond well reasonable conclusions to assume that all of the principals of all of these schools knew nothing about this. These all had athletic directors, all of them had coaches, everybody came up her and said: We didn't know anything about it except that it was within their system. Their own athletic directors had already acted upon it. And taken in connection with all of the other evidence, I just could not comprehend them all saying the same

thing. It was just stretching matters as far as this Court was concerned.

Now, I do find that there was some evidence. Some evidence upon which they could have based their decision was the fact that the parties did retain their property in Irving and they moved to rented property that was made available to them by a family member. That to me is circumstantial evidence. And it is some evidence upon which their ruling could have been based, so I am not holding that there was no evidence. There was some evidence.

But I am ruling that there was a pervasive bias in the conduct of the hearing and that Mr. Boyd will probably be able to give you more than I have delineated. Those are simply ones that I carried in my mind after hearing the evidence for nearly five days.

Now, are you willing to agree to some of the requests for modification of judgment that he has asked?

MR. NOLAN: I have not seen any.

THE COURT: Well, why don't you look at it. You might be willing to agree. I'm satisfied that my ruling, there's plenty evidence in the record of what I've said. If what I've said is wrong, then the appellate court can look right at it and say: Well, you can look at those things under oath and they don't make any difference. And if they want to say that, they can say it. But fair and impartial means that you

don't have a predisposition, you don't have a predisposition when you go into a hearing. And if you don't have a predisposition, then you don't do the things that this body did is what my conclusion of the matter was.

MR. BOYD: Fortunately, I think much of this is rehash, with that generally we would agree. But nothing in here at this time is nothing of the nature that would be compatible with the Court's findings.

THE COURT: I understand that. I've now given you my recollection. I'll hear from Mr. Nolan, if you would like, and then hear from Mr. Luna about, if you want to point out to me the error of my ways.

MR. NOLAN: I have a question first, your Honor. Let me hand you this. I'm unclear on one point. You said there was some evidence from which the District Executive Committee could have made that

hearing.

THE COURT: Yes, sir.

MR. NOLAN: But that since they were biased --

THE COURT: That is correct.

MR. NOLAN: So am I correct in saying that had there not be a finding of bias, that the Court's ruling would have been different?

THE COURT: Yes, sir.

MR. BOYD: They've got a motion to modify. Do you want to hear my motion for reconsideration?

discretion. And that's what this Court is talking about. So you can have compeling evidence, but if you don't have an impartial tribunal it doesn't make any difference. In this case, everyone is entitled to an impartial hearing.

THE COURT: The Court will find that there was no compeling evidence. There was only a scintilla of evidence and that most of it was hearsay, most of it was contrary to the direct evidence of Coach Overton, to the parents, and everything, and it was simply statements of -- that what he said isn't true.

And as you recall, the gentlemen took the stand and said: And he's told me if he was called upon under oath he would deny that he said it. This is a deliberate effort to under cut another man's credibility, a peer, which I consider to be a devastating

thing to do to a peer. A devastating...

MR. BOYD: The only thing that we are here today on after commenting on Mr. Luna's comments, and I will get to the Court those cases providing that you should not supersede the injunction, is that we have requested in our motion to modify the final judgment a couple of things.

Number one, Highland Park has been advised, and I don't think there's any dispute at this point, that if they allow Greg Jones to play, and he did suit up Friday night, didn't get to play, but if they allow him to play, that there's another penalty proceedings in the UIL rule which I attached to

that's not a constitution right at all and that therefore --

THE COURT: I found it was pervasive bias, more than just simple bias.

MR. LUNA: Yes, sir.

THE COURT: It stuck its head up at every point.

MR. LUNA: I understood the Court's finding. But that's a finding based on the bias in the hearings, and is not a Civil Right violation and the pleadings don't even ask for 1983 relief and it's just not that kind of case.

THE COURT: Mr. Luna, if the authorities that you quote on supersedeas say that the Court must set a supersedeas bond, then I'll consider it. If it says I have a discretion, I will set no supersedeas. I'll refuse to set because of the fact that this was done to this student here in his Senior

year. And I consider that the damage to him already is substantial.

MR. LUNA: Your Honor, I just, as you know, just gotten into this case.

THE COURT: This prejudicial action by this responsible body to me has done this young man substantial damage already.

MR. LUNA: I'll bring some authorities down this afternoon. And I believe I will bring authorities down that will indicate that the Court does not have discretion in a permanent injunction.

THE COURT: But it must be that I do not have any